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11                 Attorney for defendant David Reid

12                 IN THE UNITED STATES DISTRICT COURT

13                 FOR THE DISTRICT OF NEW MEXICO

14                 UNITED STATES OF AMERICA,

15                 Plaintiff,

16                 CR-05-1849 JH

17                 vs.

18                 DAVID REID,

19                 Defendant.

20                 DEFENDANT REID'S REPLY TO PLAINTIFF'S  
21                 RESPONSE TO DEFENDANT REID'S SUPPLEMENT TO MOTION  
22                 TO SEVER

23                 The defendant Reid, by his counsel undersigned, hereby replies to  
24                 the Plaintiff's Response to Reid's Supplement to his Motion to Sever (doc.  
25                 1667).

26                 1.         The Government is correct that the pleadings of the parties set  
forth be appropriate test in the Tenth Circuit, and others, on this issue.

1     Essentially, the Affidavit must establish sufficient facts to show that the co-  
2     defendant would indeed testify and that the testimony would be helpful to a  
3     co-defendant. It is respectfully submitted that the Hill Affidavit passes  
4     muster under each prong of the standard.  
5

6        2.     *Brady* information is no longer limited to a situation of another  
7     individual indicating they committed a crime and that the charged  
8     defendant did not. It spans a number of more subtle areas including even  
9     areas apart from ultimate guilt or innocence. For example, *Brady* material  
10    for many years has also included information to be used solely for  
11    impeachment of a Government witness. *Giglio v. U.S.*, 405 U.S. 150  
12    (1972).

13        3.     This case will be tried primarily by the Government on the facts  
14     developed from cooperating witnesses who will offer information about  
15     who was involved from their direct observation and from hearsay  
16     statements made by others. All the defendant Reid seeks is the  
17     opportunity to put on an individual similarly situated who will testify that he  
18     was not involved.  
19

20        4.     The defendant Hill, according to the Government's own  
21     evidence, was heavily involved in activities in the Midwest. He was closely  
22     aligned with the head of this organization, the alleged Dana Jarvis. The  
23  
24

1 Government's evidence will attempt to show that Mr. Reid was involved  
2 with flying aircraft with and for Jarvis and others into the same geographic  
3 area. Surveillance was conducted of these areas and Mr. Hill is involved in  
4 that same general geographic investigation. The Government may offer  
5 testimony for individuals who will say that they saw or heard that Mr. Reid  
6 was involved in that venture. The defendant Reid simply seeks access to  
7 another co-conspirator who was there and who will say he was not. This  
8 constitutes exculpatory information. See Jones v Jago, 575 F.2d 1164 (6<sup>th</sup>  
9 Cir. 1978).

10  
11 5. In its response, the Government makes some good points  
12 which are more properly to be raised in cross examination. The points they  
13 raise may be utilized by the Government to dilute the effectiveness of Mr.  
14 Hill's testimony and may cause the trier of fact to give it less weight.  
15 However, they do not operate as absolute bar to the defendant Reid having  
16 access to the testimony. It is up to the trier of fact, not the Government,  
17 to determine what weight Hill's testimony should be given. To make that  
18 analysis, this trial jury must at least hear Hill's testimony.

19  
20 6. As mentioned in prior filings, the defendant Reid has a  
21 constitutional right to access to testimony from co-defendants that will  
22 be helpful to his case.

1 Therefore, the Court should grant the defendant Reid's Motion to  
2 Sever.

3 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of June, 2009

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BY /S/ Walter Nash  
WALTER NASH  
Attorney for Defendant Reid

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1 CERTIFICATE OF SERVICE  
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I hereby certify that a true and correct copy of the foregoing pleading  
was delivered to opposing counsel and all other counsel of record *via* the  
CM/ECF system this 26<sup>th</sup> day of June, 2009.

6 /s/ Walter Nash  
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